EMBASSY OF PERU
1700 MASSACHUSETTS AVE. N.W.
WASHINGTON, D.C. 20036

July 7, 2006

The Honorable Congressman
William M. Thomas
Chairman of the Ways and Means Committee
Unites States House of Representatives
Washington, DC

Dear Mr. Chairman,

I have the pleasure of extending you attached the letter sent by the Prime Minister of Peru, Mr. Pedro Pablo Kuczynski, in response to concerns on labor issues raised last year by the Ranking Minority Member of the Ways and Means Committee, Congressman Charles Rangel and others democratic members of your Committee to the USTR. The attached document also addresses questions that democratic trade counsels put forward to the Embassy earlier this year.

I look forward to working with you further on this and other important matters with a view to contribute to the prompt approval of the US- Peru Trade Promotion Agreement.

Eduardo Ferrero
Ambassador

c/c
Ambassador Susan Schwab, United States Trade Representative
Angela Ellard, Majority Staff Director

PRESIDENCIA DEL CONSEJO DE MINISTROS

Pedro-Pablo Kuczynski
Presidente

Lima, July 7, 2006

The Honorable Charles B. Rangel
U.S. House of Representatives
Washington, DC 20510

Dear Congressman Rangel,

With regard to the concerns on Peru's labor situation expressed by four Congressmen of the Democratic Party in the letter they sent to Ambassador Rob Portman in September 20th 2005, please find attached to this letter a document in which we are trying to respond to the issues raised in the above mentioned communication.

Sincerely,

Pedro Pablo Kuczynski

It was a pleasure to see you in Washington !

cc: The Honorable Bill Thomas
The Honorable Ben Cardin
The Honorable Sander Levin
The Honorable Xavier Becerra
The Honorable Susan C. Schwab

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Labor Situation and worker's rights in Peru

Peru has made significant labor law reforms in recent years and is committed to ensuring that our labor laws are consistent with internationally recognized labor rights. In 2005, the International Labor Organization (ILO) noted with satisfaction the adoption of the many labor law reforms by Peru and recently praised Peru as a leading example of efforts in the Americas to bring national laws into compliance with ILO standards.

Peru has ratified all eight core conventions of the ILO. We passed major labor law reform in 2003 that strengthens labor rights and addresses ILO observations on Peru's labor laws. These reforms eliminated provisions that denied union membership for workers during probationary periods, required workers to be active members of a trade union and employed for one year to be eligible for union leadership positions, prohibited unions from engaging in political activity, required compulsory arbitration in the case of a strike involving essential public services, obligated a trade union to compile reports requested by the labor authority, and required public servants to annually renew requests for deduction of union dues. The reforms also reduced the number of workers needed to form a union, limited the power of the labor authority to cancel a union's registration, removed the waiting period for reapplying to register a union and instead permitted reapplication after the union has remedied the problem, and lessened the requirement to show "dual majority" support in order to conclude a collective bargaining agreement covering workers in a "branch of activity" or occupation.

In addition to the observations discussed above, the ILO has urged continued consideration of a small number of additional observations.

The ILO observed that Peruvian labor law does not specifically provide for sanctions for acts of interference by employers in trade union organizations and that the judicial procedures for dealing with complaints of anti-union discrimination or interference remain slow.

The Peruvian Constitution recognizes the right of workers to unionize, to bargain collectively and to strike. Law 25593, Law on Collective Work Relations (LCWR) prohibits employers from interfering with workers' right to form unions. Peru has also ratified ILO Conventions 87 and 89. The Constitutional Court has held that the constitutional protections on freedom of association set out in Article 28 of Peru's Constitution must be interpreted in accordance with ILO Conventions 87 and 98.[1] (In particular, Case 3311-2005-PA/TC established a judicial precedent

[1] More broadly, the Constitutional Court has ruled that: "In compliance with the fourth and final transitory provision of the Constitution, constitutional rights must be interpreted within the context of the international treaties signed by Peru on the subject. This rule provides for these treaties to be a parameter

for guaranteeing that unions may operate free from employer acts of interference.)

The Law on Productivity and Competitiveness provides that dismissals for union activity are null and void and that a worker may seek judicial relief for such dismissal. This right is provided to the worker is included in The Employment Promotion Act of 1991. The Employment Promotion Act also allows workers the option of reinstatement or indemnity in all cases of dismissals, including dismissals for union activities.

Workers also have an option to seek reinstatement by filing an "amparo" (injunction), a constitutional challenge on the grounds that a dismissal is in violation of the Constitution. Such procedures have been more expeditious than labor courts. The best known example involves a ruling of the Constitutional Tribunal in September 2002 that "Telefónica del Perú" had to rehire over 400 employees dismissed for their union activities. Several similar decisions followed.

Furthermore under Article 168 of the Criminal Code, it is a criminal offense to use violence or a threat of violence to compel someone to join a union or to prevent someone from joining a union.

Moreover, current labor law provides labor inspectors the authority to investigate and reach conclusions on violations of fundamental labor rights, including anti-union interference, which could be used as evidence in any labor court proceeding. Under the new labor inspection law, currently under review by the Peruvian Congress, violations of fundamental labor rights will be defined as a severe violation for enforcement purposes.

The ILO recommended that the government repeal section 9 of Legislative Decree 728 (previously section 42 of the Employment Promotion Act of 1995), under which an employer could introduce changes to working shifts, days and hours as well as the form and manner in which work is performed that could amount to unilateral changes in the content of collective bargaining agreements or require their renegotiation.

Section 9 of Legislative Decree 728 only allows an employer to make non-substantial modifications to an individual work contract. Section 9 does not permit unilateral changes to a collective bargaining agreement.

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of interpretation for the rights recognized by the Constitution. Therefore, the concepts, reach and scope of protection specified in these treaties, constitute parameters that must be observed, if that is the case, to interpret a constitutional right. All of this, of course, without prejudice of the direct application of the international treaty provisions as integral part of Peruvian legislation."

According to rulings of the Constitutional Court, Article 28 of the Constitution makes collective bargaining agreements binding for the parties. In one recent case, the Constitutional Court held that an employer could not unilaterally change the work day from what was otherwise specified in the collective bargaining agreement (Case 4635-2004-AA/TC). In another case, it found that an employer could not modify a vacation bonus provision of a collective bargaining agreement (Case 1358-2001-AA/TC). These rulings are broadly recognized in Peru to prevent unilateral changes to a collective bargaining agreement under section 9 of Legislative Decree 728.

Furthermore, to clarify this matter and dispel any conflicting interpretations, last week we approved a Supreme Decree stipulating that section 9 does not allow employers to unilaterally change the contents or conditions established in collective bargaining agreements

The ILO requested that the Government take measures to amend section 73(b) of the LCWR so that, to be able to call a strike, the decision only has to be adopted by the majority of those voting.

Article 72 of the LCWR defines a strike as the collective suspension of work and abandonment of the workplace that has been made voluntarily and peacefully and agreed upon by a majority of the workers.

Section 73(b) of the LCWR, modified by Law 27912 of January 8th 2003, establishes that in order for a strike to be declared a majority of the workers must supported it. The LWCR does not define what constitutes a "majority of the workers"; thus, permitting the unions to determine for themselves what constitutes a strike-granting majority. Therefore, a union is free to base what constitutes a strike-majority on the number of votes cast, rather than the number of workers in the establishment. Unions make the determination of what constitutes a strike-granting majority without any intervention of the government, consistent with Article 3 of ILO Convention 87. This issue was clarified last week through a Supreme Decree.

In addition to the ILO observations, we are aware that a few other questions have been raised regarding Peruvian labor law.

One such question involves the share of arbitration costs between unions and employers. If an arbitration concerns collective bargaining issues, workers and employers are obligated to pay arbitration costs. Supreme Decree 011-02-TR, issued pursuant to Article 53 of the LCWR, establishes a scale of arbitration costs. If the parties cannot agree on the allocation of arbitration costs, the arbitrator may decide the appropriate allocation. In other types of

cases, arbitration costs are determined by the parties and the arbitrator and not based upon a scale. In order to facilitate arbitration and alleviate the costs for unions, the Ministry of Labor just introduced a modification that significantly reduces the required reimbursement rates for arbitrations involving collective bargaining agreements.

Another question concerns the adequacy of child labor protections. The government has undertaken a number of initiatives to address the issue. Under these initiatives, Peru has strengthened child labor laws, raised public awareness, and developed national plans of action.

The legal regime against child labor has been strengthened. In 2000, Peru adopted a new Child and Adolescent Code, which it modified again in 2001 to raise the legal minimum age. The Child and Adolescent Code also prohibits the use of children in forced and slave labor practices, labor that is economically exploitative, and prostitution and trafficking. In 2004, Peru passed additional penal laws to further protect children from trafficking and sexual exploitation. The Government has also increased the penalties for such crimes as child prostitution and child pornography.

Peru has also established integrated committees to address child labor concerns. A multi-sectoral committee is responsible for implementing the Plan of Action for Children and Adolescents 2002-2010 (PNAI) as adopted by the Ministry of Women and Social Development (MIMDES). Peru has participated in the ILO's International Program for the Elimination of Child Labor (IPEC) for over a decade and these efforts are coordinated through the National Committee for the Prevention and Eradication of Child Labor (CPETI).

A further question concerns an allegation of the use of temporary employees to thwart union recruitment. There is no provision in Peruvian labor law that prohibits temporary employees from affiliating with the same union as permanent employees. Article 79 of the LPCL states that workers hired for indeterminate periods and those hired for determined periods (temporary) have the same rights. If an employer fired a temporary employee for trying to exercise his rights to affiliate, he would have a cause of action for reinstatement under Articles 29 and 34 of the LPCL, and the worker also would have a right to invoke the constitutional protections of Article 28.

A question also has been raised concerning special regulations for workers in Export Processing Zones. There is no difference between labor legislation applicable to export processing zones, free zones, industrial processing zones or CETICOS and general labor legislation.

Even though, the LPCL indicates that temporary work contracts executed in free economic zones, as well as whatever other type of special system, will be regulated by their own provisions, laws concerning CETICOS (Law 26953 and Supreme Decree 112-97-EP) do not establish any type of special labor system; therefore, workers fall under the scope of general labor provisions.

At the same time, Law 27688, law for the free zone and commercial zone of Tacna, does not establish any special labor system either. Its Article 20 expressly indicates that workers that provide services in this area fall under the scope of general labor provisions.

We also are aware of a question concerning the right to strike in essential public services, in particular the authority of the Ministry of Labor, rather than an independent body, to determine minimum essential services that need to be maintained when a strike is declared in an essential public service. The only limitation on the right to strike in essential public services is the maintenance of a minimum service. This limitation reconciles the right of workers to strike with the public interest.

The Peruvian Congress is currently considering the new General Labor law, which already has been favorably reported by the Congress' Labor Committee and is ready for floor consideration. The bill provides for the National Labor Council – a tripartite agency comprising representatives from the Ministry, workers and employers – to set up minimum services in cases of disagreement, when a strike is declared in essential public services. Although, the Executive has approved a Supreme Decree establishing that in cases of disagreement to set up minimum services between workers and employers, the Ministry of Labor will designate an independent entity to settle the aforementioned disagreement. Nevertheless, this issue should soon be settled by Congress through the aforementioned Law.

The LCWR modified an earlier provision to establish a more specific list of essential services. The list includes sanitary and health services, water and sewage, electricity, gas and fuels, funeral homes, autopsies, necropsies, penitentiaries, telecommunication, transportation, legal services (as determined by the Supreme Court of Justice) and strategic or security services related to national security.

Lastly, a question has been raised concerning responsibility and criteria for the declaration of the legality of a strike. For private sector strikes, the Ministry of Labor and Employment Promotion is the agency responsible for declaring the legality of strikes. In the case of the public sector, each Ministry is responsible for declaring the legality of the strike that affects its own sector.

A strike is legal if it fulfills certain requirements: the union must have exhausted all possibilities of reaching a settlement through the collective bargaining process; the union must have adopted the decision to strike in accordance with its own statutes; the strike must represent the will of the majority of workers; notice of the strike must be conveyed to the employers as well as to the Ministry of Labor and Employment Promotion within the legal time frame, and the dispute process must not have been submitted to arbitration.